DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 98-0037 ST
Sales/Use Tax Penalty
Calendar Years: 1990-1995

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8-1-10-2.1(d), 45 IAC 15-11-2

STATEMENT OF FACTS

Taxpayer is a subsidiary which operates within Indiana and provides intrastate telecommunications services.

I. Tax Administration – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in reporting its sales and use taxes. A prior audit containing identical issues was completed on November 3, 1992.

Taxpayer protests the penalty contained in three issues of the audit under (a) Sales Tax, (b) Sales Tax Collection Allowance, and (c) Use Tax which are addressed separately below.

(a) Sales Tax – taxpayer states that it files over 1300 non-income returns a month and that during the six year audit period, all returns were accepted as filed with the exception of four months in 1994. Taxpayer further states that the under reporting was caused by human error and processes have been put in place to insure that these types of errors do not occur in the future.

Each year from 1990 through 1993, sales increased significantly. 1994 showed over 27 million dollars less than 1993. 1995 was also significantly higher than 1994.

Taxpayer has no less than $10 million in sales per month. In May, June, July, and September 1994, approximately $2.5 Million was reported. A checks and balancing system by the taxpayer would have avoided the underpayment of the trust tax and a review of the monthly returns and year end payments would have shown a discrepancy.

The penalty is appropriate as the taxpayer underreported its sales.

(b) Sales Tax Collection Allowance – taxpayer states it had taken the Collection Allowance due to a misunderstanding of Indiana law, that this was an issue in the prior audit, and that upon notification by the Department, it stopped claiming this allowance.

At issue is calendar year 1990, approximately one year before the prior audit was completed. Taxpayer, however was aware of the disallowance at the close of the prior audit dated November 3, 1992 and should have corrected the 1990 year by making the collection allowance payment.

The penalty is appropriate as the taxpayer was aware of the underpayment and should have remitted the collection allowance.

(c) Use Tax – taxpayer states it has a use tax accrual system in place and that the liability represents a small margin of error for a company this size with the volume of transactions that must be manually reviewed.

The issue was present in a prior audit, the items assessed are clearly taxable, and in all years, less then 15% was self assessed. 1993 through 1995 showed no use tax self assessed.

The penalty is appropriate as the taxpayer made little effort to self assess and the issue was present in a prior audit.

FINDING

The taxpayer's protest is denied. The negligence penalty is appropriate.